

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Application by Verizon Maryland Inc.,)	
Verizon Washington, D.C. Inc., Verizon West)	WC Docket No. 02-384
Virginia Inc., Bell Atlantic Communications,)	
Inc. (d/b/a Verizon Long Distance), NYNEX)	
Long Distance Company (d/b/a Verizon)	
Enterprise Solutions), Verizon Global)	
Networks Inc., and Verizon Select Services)	
Inc., for Authorization To Provide In-Region,)	
InterLATA Services in Maryland,)	
Washington, D.C., and West Virginia)	

MEMORANDUM OPINION AND ORDER

Adopted: March 18, 2003

Released: March 19, 2003

By the Commission: Commissioners Capps and Martin approving in part, concurring in part, and issuing separate statements; Commissioner Adelstein issuing a statement.

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I. INTRODUCTION

1. On December 19, 2002, Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., collectively Verizon, filed an application pursuant to section 271 of the Communications Act of 1934, as amended,¹ for authority to provide in-region, *interLATA* service originating in the states of Maryland, West Virginia, and

¹ We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or the Act. 47 U.S.C. §§ 151 *et seq.*

the District of Columbia (Washington, D.C.).² We grant the application in this Order based on our conclusion that Verizon has taken the statutorily required steps to open its local exchange markets in Maryland, Washington, D.C., and West Virginia to competition.

2. In ruling on Verizon's application, we wish to acknowledge the effort and dedication of the Maryland Public Service Commission (Maryland Commission), the District of Columbia Public Service Commission (D.C. Commission), and the West Virginia Public Service Commission (West Virginia Commission), collectively the state commissions, which have expended significant time and effort overseeing Verizon's implementation of the requirements of section 271. The state commissions conducted proceedings to determine Verizon's section 271 compliance and provided interested third parties with ample opportunities for participation in their proceedings. Additionally, the state commissions adopted a broad range of performance measures and standards, and in all three states, Performance Assurance Plans (PAPs) are in place that are designed to create a financial incentive for Verizon's post-entry compliance with section 271.³ Moreover, the state commissions have committed themselves to actively monitor Verizon's continuing efforts to open the local markets to competition. As the Commission has repeatedly recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purposes of the 1996 Act serve a vitally important role in section 271 proceedings.⁴

3. Verizon contends in its application that as of September 2002, competitive local exchange carriers (competitive LECs) served approximately 533,000 lines in Maryland,⁵ 193,000 lines in Washington, D.C.,⁶ and 32,000 lines in West Virginia.⁷ Additionally, Verizon asserts

² See Application By VerizonMaryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a VerizonLong Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia, WC Docket No. 02-384 (filed Dec. 19, 2002) (Veriwn Application).

³ Verizon Application at 16

⁴ See Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Record 17419, 17421, para. 3 (2001) (Verizon Pennsylvania Order) appeal pending, Z-Tel Communications v. FCC, No. 01-1461 (D.C. Cir. filed Oct. 17, 2001); Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut, CC Docket No. 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (Verizon Connecticut Order); Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (Verizon Massachusetts Order) aff'd sub nom. WorldCom, Inc. v. Federal Communications Commission, 308 F.3d 1 (D.C. Cir. 2002).

⁵ Verizon Application at 5.

⁶ Id. at 7

that it had provided competing carriers in Maryland with approximately 250,000 interconnection trunks, 77,000 in Washington, D.C., and 34,000 in West Virginia? Verizon also states that it has in service about 133,000 unbundled loops in Maryland: 23,000 in Washington, D.C.,¹⁰ and 24,000 in West Virginia." Moreover, Verizon contends that the majority of competitive lines are being served using facilities that competitors have deployed themselves, in addition to other modes of entry permitted under the Act."

11. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service.¹³ Under section 271, Congress requires that the Commission review BOC applications to provide such service in consultation with the affected state and the Attorney General.¹⁴

5. Maryland. On April 12, 2002, Verizon made a compliance filing for section 271 approval with the Maryland Commission.¹⁵ On December 16, 2002, the Maryland Commission issued its conditional approval of Verizon's application for authority to provide in-region, interLATA services in Maryland.¹⁶ The Maryland Commission found that Verizon is technically in compliance with the section 271 checklist, subject to Verizon's compliance with a series of

(Continued from previous page)

⁷ *Id.* at 8.

⁸ *Id.* at 18

⁹ Verizon Application, App. A, Vol. I, Tab A, Decl. of Paul A. Lacouture and Virginia P. Ruesterholz Regarding Maryland (Verizon Lacouture/Ruesterholz Maryland Decl.), para. 86.

¹⁰ Verizon Application, App. A, Vol. 1, Tab B, Decl. of Paul A. Lacouture and Virginia P. Ruesterholz Regarding Washington, D.C. (Verizon Lacouture/Ruesterholz D.C. Decl.), para. 81.

¹¹ Verizon Application, App. A, Vol. 1, Tab C, Decl. of Paul A. Lacouture and Virginia P. Ruesterholz Regarding West Virginia (Verizon Lacouture/Ruesterholz West Virginia Decl.), para. 82.

¹² Verizon Application at 1.

¹³ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁴ The Commission has summarized the relevant statutory framework in prior orders. *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001).

¹⁵ Maryland Commission Comments, Ex. A at 1

¹⁶ *Id.* at 3.

conditions.¹⁷ Verizon subsequently agreed to comply with those **conditions**.¹⁸ The issues that received conditional approval include checklist item 1 (model interconnection terms and conditions, entrance facilities), checklist item 2 (EELs, billing, UNE pricing), checklist item 4 (provisioning of high capacity local loops, dark fiber, line sharing), and checklist item 8 (directory listings and related charges).” Additionally, the Maryland Commission noted a number of concerns pertaining to the state of competition in Maryland.” The Maryland Commission expressed concerns regarding: (1) the removal of UNE-platform competitors, (2) the separate affiliate and related safeguards of section 272, and (3) Verizon’s use of the E911 database to provide local exchange carrier line counts?” The concerns and conditions imposed by the Maryland Commission are discussed more fully in the appropriate checklist item or public interest sections below.

6. Washington, D.C. On July 12, 2002, Verizon made a compliance filing for section 271 approval with the D.C. Commission, which the D.C. Commission approved on December 19, 2002.²² The D.C. Commission issued a consultative report on January 9, 2003, finding that Verizon’s application “generally has met the checklist conditions,” with the exception of its UNE rates?” Additionally, the D.C. Commission expressed a commitment to monitor Verizon’s performance and will address any additional concerns in either existing or new **proceedings**.²⁴

7. West Virginia. On June 11, 2002, Verizon made a compliance filing for section 271 approval with the West Virginia Commission, which the West Virginia Commission approved on December 13, 2002.²⁵ On January 9, 2003, the West Virginia Commission issued a consultative report concluding that “sufficient competition exists and that it would be in the

¹⁷ *Id.*

¹⁸ Maryland Commission Comments, Ex. B at 1

¹⁹ Maryland Commission Comments, Ex. A at 3-9.

²⁰ *Id.* at 9-10

²¹ *Id.*

²² D.C. Commission Comments at 1-2.

²³ *Id.* at 2 and 93. See discussion of UNE rates in Washington, D.C. *infra* Section IV.A.3 (Pricing of Unbundled Network Elements).

²⁴ *Id.* at 93.

²⁵ West Virginia Commission Comments at 1, 6 and 10; *see also* Verizon Application, App. J – West Virginia, Vol. 1, Tab 10, West Virginia Public Service Commission Letter Stating Verizon West Virginia Complies with Each of the Fourteen Checklist Items Contained in 47 U.S.C. § 271(c)(2)(B) (Dec. 13, 2002) (*West Virginia PSC Section 271 Compliance Letter*).

public interest for [Verizon] to receive authority to provide such in-region, interLATA services.”²⁶

8. The Department of Justice recommends approval of this application, subject to the Commission “satisfying itself” regarding Verizon’s checklist compliance for certain pricing, and directory listing issues.” Specifically, the Department of Justice expresses concern regarding whether the prices supporting Verizon’s application in Washington, D.C. are appropriately cost-based, and whether Verizon provides nondiscriminatory access to white page directory listings for competitive LECs?”

III. COMPLIANCE WITH SECTION 271(c)(1)(A)

9. As a threshold matter, we address Verizon’s compliance with section 271(c)(1) which requires, **as** a prerequisite for any approval of a BOC’s application to provide in-region, interLATA services, that the BOC demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B).²⁹ To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of “telephone exchange service. . .to residential and business **customers**.”³⁰ In addition, the Act states that “such telephone service may be offered . . . either exclusively over [the competitor’s] own telephone exchange service facilities or predominantly over [the competitor’s] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier.”” The Commission has concluded that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business **subscribers**,³² and that the use of unbundled network elements (UNEs) constitutes a competing provider’s “own telephone exchange service facilities” for purposes of section 271(c)(1)(A).” The Commission has further held that a BOC must show that at least one “competing provider” constitutes “an

²⁶ West Virginia Commission Comments at I.

²⁷ Department of Justice Evaluation at 2-3.

²⁸ *Id.* The Department of Justice also expressed concerns regarding Verizon’s compliance with local dialing parity requirements. *Id.* at 3 n.4.

²⁹ 47 U.S.C. § 271(d)(3)(A).

³⁰ 47 U.S.C. § 271(c)(1)(A).

³¹ *Id.*

³² *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20589, para. 85 (1997) (*Ameritech Michigan Order*); see also *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20633, paras. 46-48 (1998) (*Second BellSouth Louisiana Order*).

³³ *Ameritech Michigan Order*, 12 FCC Rcd at 20598, para. 101

actual commercial alternative to the BOC,”³⁴ which a BOC can do by demonstrating that the provider serves “more than a *de minimis* number” of subscribers.³⁵ The Commission has interpreted Track A not to require any particular level of market penetration, however, and the D.C. Circuit has affirmed that the Act “imposes no volume requirements for satisfaction of Track A.”³⁶

10. We conclude, as did the state commissions, that Verizon satisfies the requirements of Track A in Maryland, Washington, D.C., and West Virginia.)’ Verizon relies on interconnection agreements with AT&T, Comcast, eLEC, FiberNet, Starpower, and StratusWave in support of its Track A showing.)’

11. In Maryland, we find that Comcast and Starpower each provides telephone exchange service to more than a *de minimis* number of residential and business end users predominantly over its own facilities and represents an “actual commercial alternative” to Verizon in Maryland.” Similarly, in Washington, D.C., we find that AT&T and Starpower each provides telephone exchange service to more than a *de minimis* number of residential and business end users predominantly over its own facilities and represents an “actual commercial alternative” to Verizon in Washington, D.C.⁴⁰ In West Virginia, we find that eLEC, FiberNet, and StratusWave serve more than a *de minimis* number of residential and business end users predominantly over their own facilities and represent an “actual commercial alternative” to Verizon in West Virginia.” Specifically, eLEC provides telephone exchange service to both

³⁴ *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, Memorandum Opinion and Order, 12 FCC Red 8685,8695, para. 14 (1997) (*SWBT Oklahoma Order*).

³⁵ *SWBT Kansas/Oklahoma Order*, 16 FCC Red at 6257, para. 42; see also *Ameritech Michigan Order*, 12 FCC Red at 20585, para. 78.

³⁶ *Sprint Communications Co. v. FCC*, 274 F.3d at 553-54 (D.C. Cir. 2001); see also *SBC Communications Inc. v. FCC*, 138 F.3d 410,416 (D.C. Cir. 1998) (“Track A does not indicate just how much competition a provider must offer in either the business or residential markets before it is deemed a ‘competing’ provider.”).

³⁷ See D.C. Commission Comments at 16; West Virginia Commission Comments at 113. The Maryland Commission did not address the issue.

³⁸ Verizon Application at 5-9. Verizon Application, App. A, Vol. 5, Tab J, Decl. of John A Torre (Verizon Torre Decl.) Attach. 1, Ex. B; Attach. 2, Ex. B; Attach. 3, Ex. B (*citing confidential versions*).

³⁹ Verizon Application at 5-6; Verizon Torre Decl. Attach. 1, Ex. B (*citing confidential version*),

⁴⁰ Verizon Application at 7; Verizon Torre Decl. Attach. 2, Ex. B (*citing confidential version*).

⁴¹ Verizon Application at 8-9; Verizon Torre Decl. Attach. 3, Ex. B (*citing confidential version*). We find that competitors have penetrated the business market to a notable extent, considering West Virginia’s largely rural nature. While there is less facilities-based competition for residential customers than for business customers, the level of facilities-based competition in the residential market is comparable to other largely rural states where the Commission has granted section 271 authority, and, in any event, satisfies the minimum requirements of Track A. See *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the* (continued. ...)

residential and business subscribers in West Virginia through **UNE-platform**.⁴² FiberNet provides telephone exchange service to both residential and business subscribers in West Virginia through its own facilities.⁴³ StratusWave provides telephone exchange to business customers in West Virginia predominantly through its own facilities, and residential customers through **resale**.⁴⁴

12. We reject arguments by the District of Columbia Office of the People's Counsel (OPC-DC) that Verizon fails to satisfy Track A in Washington, D.C. because the E911 database, upon which **we** rely, overstates the number of competitive LEC **lines**.⁴⁵ The OPC-DC argues that Verizon's showing for Track A is overstated because the E911 database overstates lines for customers using a PBX. Assuming OPC-DC is correct that the E911 database overstates such lines, this fact is not dispositive of the question at hand. Only business customers (and not residential customers) use PBXs, and thus, only the number of business lines in the E911 database could be overstated. Accordingly, even if we allow for some level of overstatement, the number of business lines in Washington, D.C. still exceeds the *de minimis* threshold.⁴⁶ We note that AT&T and Starpower, upon whose line counts we rely, and that are participants in this proceeding at both the state and federal level, have not disputed these numbers?

13. We also reject Z-Tel's argument that Verizon fails to satisfy Track A in West Virginia because the Commission may decide to eliminate the BOCs' requirement to provide

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Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, CC Docket 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719, 20778-80, paras. 117-21 (2001) (*SWBT Arkansas/Missouri Order*); *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6256-59, paras. 40-44.

⁴² Verizon Torre Decl. Attach. 3, Ex. B (*citing confidential version*).

⁴³ *Id.*

⁴⁴ *Id.* See also Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1-2 (filed Feb. 5, 2003) (Verizon Feb. 5 *Ex Parte* Letter on Track A).

⁴⁵ OPC-DC Comments at 19. Similarly, the Maryland Commission expresses doubts on the use of the E911 database for providing local exchange carrier line counts in Maryland. Maryland Commission Ex. A at 10. Additionally, Core argues that Verizon's application overstates the number of minutes-of-use that competitive LECs exchange with Verizon, because most of the minutes-of-use that Verizon receives from competitive LECs is the result of dial-up Internet traffic. See Core Comments at 23. We need not address Core's argument because we do not rely on minutes-of-use measures for our Track A analysis.

⁴⁶ Verizon Torre Decl. Attach. 2, Ex. B (*citing confidential version*).

⁴⁷ AT&T and Starpower have both filed comments in this proceeding. See Appendix A. We note the Commission's reliance on a similar showing by Southwestern Bell Telephone (SWBT) that it satisfied Track A using Ionex, which was explicitly approved by the United States Court of Appeals for the D.C. Circuit. The court found that since Ionex had been a party to the proceeding, Ionex had been put on notice "that [SWBT] was using Ionex's service to satisfy Track A. Ionex uttered not a peep in protest, correction or qualification." *Sprint v. FCC*, 274 F.3d at 562.

UNE-platform lines to competitors in its *Triennial Review*.⁴⁸ Consistent with Commission precedent, we require Verizon to demonstrate that it is in compliance with the rules in effect on the date of the filing, and as of December 19, 2002, Verizon was required to provide UNE-platform lines to competitors.⁴⁹

IV. PRIMARY ISSUES IN DISPUTE

14. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish compliance with every checklist item.⁵⁰ Rather, we rely upon the legal and analytical precedent established in those prior section 271 orders, and we attach comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.⁵¹ Our conclusions in this Order are based on performance data as reported in carrier-to-carrier reports reflecting service in the period from August 2002 through December 2002.

15. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing issues concerning Verizon's compliance with checklist item numbers 2, 12, and 1, which encompass access to UNEs, local dialing parity, and interconnection, respectively. Next, we address checklist item numbers 4, 7, 8, 10, 11, 13, and 14 which cover access to unbundled local loops, 911/E911 access and directory assistance/operator services,

⁴⁸ Z-Tel Comments at 2. The Maryland Commission is also concerned about the availability of UNE-platform. Maryland Commission Comments, Ex. A at 9-10. See also *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) (*Triennial Review*). On February 20, 2003, the Commission took action to revise its rules concerning incumbent LECs' obligations to make available elements of their networks on an unbundled basis to requesting carriers. *FCC Adopts New Rules For Network Unbundling Obligations Of Incumbent Local Phone Carriers*, News Release, (rel. Feb. 20, 2003) (announcing adoption of an Order on Remand and Further Notice of Proposed Rulemaking in CC Docket No. 01-338, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*) (*Triennial Review News Release*). We note, however, that, in determining whether a BOC applicant has satisfied the requirements of section 271, the Commission evaluates an applicant's compliance with the competitive checklist as developed in the Commission's local competition rules and orders in effect at the time the application was filed.

⁴⁹ See *Application by SBC Communications, Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996, To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18367-68, para. 28 (2000) (*SWBT Texas Order*).

⁵⁰ See *id.* at 18359-61, 65-78, paras. 8-11, 21-40, 43-58; *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3961-63, 3966-69, 3971-76, paras. 17-20, 29-37, 43-60 (1999) (*Bell Atlantic New York Order*), *aff'd sub nom. AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000); see also Appendix F (Statutory Requirements).

⁵¹ See generally Appendices B (Maryland Performance Data), C (Washington, D.C. Performance Data), D (West Virginia Performance Data), Appendix E (Virginia Performance Data) and Appendix F.

directory listings, signaling, number portability, reciprocal compensation, and resale, respectively. The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Verizon has satisfied these requirements. Finally, we discuss issues concerning compliance with section 272 and the public interest requirement.

A. Checklist Item 2 – Unbundled Network Elements

16. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1) of the Act.”” Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”⁵³ Based on the evidence in the record, we find, as did the state commissions, that Verizon provides nondiscriminatory access to its Operations Support Systems (OSS) in the application **states**.⁵⁴ In this section, we address those aspects of this checklist item that raised significant issues concerning whether Verizon’s performance demonstrates compliance with the Act: (1) OSS, particularly billing; (2) provisioning of UNE combinations; and (3) UNE pricing. Aside from OSS, other UNEs that Verizon must make available under section 251(c)(3) are also listed as separate items on the competitive checklist and are addressed below in separate sections for various checklist items, as are any provisioning issues that may be in **dispute**.⁵⁵

1. OSS

17. Checklist item 2 requires a BOC to demonstrate that competitors have nondiscriminatory access to the various systems, databases, and personnel (collectively referred to as OSS) that a BOC uses in providing service to its **customers**.⁵⁶ As we discuss below, Verizon has shown that evidence concerning its OSS in Virginia, which the Commission has previously found satisfies the requirements of checklist item 2, should be considered in this proceeding.” Consistent with our past practice, we focus our review **on** those OSS issues in

⁵² 47 U.S.C. § 271(c)(2)(B)(ii)

⁵³ 47 U.S.C. § 251(c)(3).

⁵⁴ Maryland Commission Comments, Ex. A at 3 (finding Verizon “in technical compliance with the [section] 271 checklist”); D.C. Commission Comments at 25, 62-77, 85-90; West Virginia Commission Comments at 20-53.

⁵⁵ See 47 U.S.C. § 271(c)(2)(B). For example, unbundled loops, transport, and signaling are listed separately as checklist items 4, 5, and 6.

⁵⁶ See *BellAtlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83.

⁵⁷ *Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc. for Authorization to Provide in-Region, InterLATA Services in Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, 17 FCC Rcd 21880, 21892, para. 22 (2002) (*Verizon Virginia Order*).

controversy and do not address each OSS element in detail where our review of the record satisfies us there is little or no dispute that Verizon meets the nondiscrimination requirements.⁵⁸ Specifically, our discussion focuses on the relevance of Verizon's Virginia OSS, Verizon's ordering systems and provisioning of competing carriers' orders, and Verizon's wholesale billing practices.⁵⁹

a. Relevance of Verizon's Virginia OSS

18. Verizon relies in this application on evidence concerning its Virginia OSS.⁶⁰ Specifically, Verizon asserts that its OSS in the application states are the same OSS as in Virginia and, therefore, evidence concerning its OSS in Virginia is relevant and should, consistent with our precedent, be considered in our evaluation of the Maryland, Washington, D.C., and West Virginia OSS.⁶¹ As discussed in the *Verizon Virginia Order*, KPMG conducted extensive third-party testing in Virginia of Verizon's OSS. To support its claim that the OSS in the application states are the same as those we approved in Virginia, Verizon submits a report from Pricewaterhouse Coopers (PwC), that attests that Verizon's systems in the application states are the same as those used in Virginia.⁶²

19. Where Verizon provides evidence that a particular system reviewed and approved in Virginia (or other Verizon state that has received section 271 approval) is also used in the

⁵⁸ *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12309, para. 77 (2002) (*Verizon New Jersey Order*).

⁵⁹ In the few instances where Verizon has failed to meet its commercial performance benchmarks or parity standards, we are persuaded that its performance is not competitively significant and conforms to the Commission's precedent. See Appendices B, C, D, E.

⁶⁰ See generally Verizon Application, App. A, Vol. 2, Tab D, Joint Declaration of Kathleen McLean and Catherine T. Webster (Verizon McLean/Webster Decl.).

⁶¹ Verizon McLean/Webster Decl., paras. 8-9, 16. As the Commission has found in previous section 271 applications, performance data based on low volumes of orders or other transactions is not as reliable an indicator of checklist compliance as performance based on larger numbers of observations. It is thus not possible to place the same evidentiary weight upon – and draw the same types of conclusions from – performance data where volumes are low, as for data based on more robust activity. See, e.g., *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, para. 36.

⁶² See generally Verizon Application, App. B-MD, Tab 11, Joint Declaration of Russell J. Sapienza and William M. Coburn, Jr., Attach. C; Verizon Application, App. B-DC, Tab 1, Joint Declaration of Russell J. Sapienza and William M. Coburn, Jr., Attach. C; Verizon Application, App. B-WV, Tab 2, Joint Declaration of Russell J. Sapienza and William M. Coburn, Jr., Attach. C (PwC Report). See also Verizon Application at 2. With respect to Verizon's OSS, "same" means that there is one unique set of software coding and configuration installed on one or more computer servers that support Maryland, Washington, D.C., West Virginia, and Virginia (collectively, the former Chesapeake & Potomac Telephone Companies, or C&P). Regarding personnel and work center facilities, "same" means that those serving Virginia use the same processes as in the other C&P jurisdictions, including the application states. Verizon McLean/Webster Decl., para. 9.

application states, our review of the same system in this proceeding will be informed by our findings in the *Verizon Virginia Order*.⁶³ We find that Verizon, through the PwC Report and its declarations, provides sufficient evidence that its OSS in the application states are the same OSS as in Virginia. Therefore, we conclude that we should consider evidence concerning its OSS in Virginia in our instant analysis.⁶⁴ Accordingly, we examine data reflecting Verizon's performance in Virginia where low volumes in one of the application states yield inconclusive or inconsistent information regarding Verizon's compliance with the competitive checklist.⁶⁵ We note that no commenter has suggested that we should not consider evidence of Verizon's Virginia OSS in this proceeding.⁶⁶

20. Based on the evidence in the record, including commercial data and third-party testing, we find that Verizon provides nondiscriminatory access to its OSS.⁶⁷ Consistent with our past practice, we focus our review on those OSS issues in **controversy**.⁶⁸ Concerning those areas of Verizon's OSS that have generated comments or been otherwise discussed below, we are satisfied that our review of the record, including our analysis of Verizon's commercial performance data for Verizon's OSS in the application states, indicate that Verizon is providing OSS to competitors in a nondiscriminatory manner, in compliance with the checklist.

⁶³ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6253-6245, para. 35. Indeed, to the extent that certain issues have been previously briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for relitigating and reconsidering those issues. *Id*

⁶⁴ Appendix F, para. 14.

⁶⁵ We note, however, that convincing commercial evidence of discriminatory treatment in a certain applicant state cannot be trumped by convincing evidence of satisfactory treatment in an "anchor state."

⁶⁶ *Bur see* OPC-DC Comments at 12-13, asserting that the D.C. Commission did not make an independent finding as to whether Verizon's Washington, D.C. OSS is the same as other OSS in neighboring jurisdictions or whether Washington, D.C.-specific testing is required. Indeed, the, D.C. Commission considered the position of a number of commenters that the D.C. Commission should not rely on KPMG's Virginia OSS test results due to possible differences between Verizon's OSS in Virginia and Washington, D.C. We agree with the D.C. Commission's determination that, having considered the record, "there is sufficient commonality between the Virginia and the District of Columbia OSS to allow generally for the extrapolation of results to operations in the District of Columbia" and "that additional, District of Columbia-specific testing would not have a sufficient probability of producing further knowledge or insight that the FCC would find probative." D.C. Commission Comments at 64, 75.

⁶⁷ See generally Appendices B, C, D, and E

⁶⁸ *Verizon Massachusetts Order*, 16 FCC Rcd at 8996, para. 15; *Verizon Connecticut Order*, 16 FCC Rcd at 14151-14152, para. 9; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20725, para. 12.

b. Ordering

21. We find, consistent with the state commissions' findings,⁶⁹ that Verizon complies with its obligation to provide competing carriers with nondiscriminatory access to the OSS functions necessary for placing wholesale and resale orders.

22. FiberNet raises numerous complaints regarding Verizon's ordering processes in West Virginia, all of which we find unpersuasive. First, FiberNet asserts that Verizon's Web Graphical User Interface (GUI) operates too slowly, and suffers from additional access problems." The record does not, however, support FiberNet's contentions. In response to FiberNet's concern that the Web GUI slows down at the same time on a daily basis, Verizon explains that the largest volume of activity processed by Verizon's back-end systems occurs between 2:00 p.m. and 3:00 p.m., each week day, and that any slowing affects equally both Verizon's retail operations and those of competitive LECs." Accordingly, we find no discrimination between Verizon's treatment of its retail operations and that of competitive LECs.

23. Additionally, Verizon explains why FiberNet was unable to access the Web GUI, and the record does not indicate that this problem was systemic." The record demonstrates that a server problem prevented FiberNet from accessing the Web GUI on October 14, 2001, and that Verizon promptly provided a workaround that resolved the temporary problem." The October 21, 2001 event occurred as a result of Verizon implementing a new Internet address (URL) for accessing a new version of the Web GUI. Verizon provides evidence that it designed this change in collaboration with competitive LECs and that, on October 10, 2001, Verizon provided notice to competitive LECs reminding them of the new URL. Some competitive LECs that used the old Web GUI continued to use existing bookmarks to go directly to the Web GUI login page received an error message due to programming logic to redirect users accessing the Web GUI home page, because the bookmarks skipped the home page and were not redirected.

⁶⁹ Maryland Commission Comments, **Ex.** A at 3; D.C. Commission Comments at 25, 62-63; West Virginia Commission Comments at 25-27, 44-45.

⁷⁰ FiberNet Comments at 27-28. FiberNet asserts that Verizon's Web GUI operates too slowly to be used on a daily basis, usually around 3:00 p.m. **EST.** *Id.* at 27. Additionally, FiberNet complains that Verizon's Web GUI ceased functioning for most of the day on October 14, 2002, and that on October 21, 2002, Verizon changed its Web GUI Internet address, but the newly provided Internet address ~~was~~ unreachable. *Id.*

⁷¹ Verizon Reply, App. A, Tab B, Reply Declaration of Kathleen McLean and Catherine T. Webster, paras. 8-9 (Verimn McLean/Webster Reply Decl.).

⁷² *Id.*, para. 9. **See also** PO-2-01-6050 (OSS Interface Avail. – Total – Web GUI); PO-2-02-6050 (OSS Interface Avail. – Prime Time – Web GUI); PO-2-03-6050 (OSS Interface Avail. – Non-Prime – Web GUI). We note that although Verizon's performance under PO-1-08-6050 (Percent Time-outs – Web GUI) did not meet performance standards in the application states for most months, the percent of time-outs were less than 3% of the time in any given month, and generally under 1%.

⁷³ Verizon McLean/Webster Decl., para. 35; Verizon McLean/Webster Reply Decl., para. 9.

Competitive LECs contacted Verizon's wholesale customer care center (WCCC) and the Connectivity Management Team worked with competitive LECs to resolve the problem."

24. Second, FiberNet asserts that Verizon's ordering process for new services is too difficult.⁷⁵ FiberNet provides little supporting evidence here to defend its allegation, and thus we find that its argument does not warrant a finding of checklist noncompliance.⁷⁶ In particular, the record demonstrates that Verizon's wholesale website provides a variety of documents to assist competitive LECs.⁷⁷ As the Commission has stated previously, it will give little, if any, weight to allegations in a section 271 proceeding without the minimum amount of detail necessary for us to determine whether that applicant fails the checklist.⁷⁸

c. Provisioning

25. Based on the evidence in the record, we find, as did the state commissions, that Verizon provisions competitive LEC customers' orders in a nondiscriminatory manner.⁷⁹ Commenters raise a variety of issues concerning Verizon's provisioning which do not warrant a finding of checklist noncompliance. FiberNet asserts that the delay in conversion from resale to M-loops⁸⁰ is unreasonable compared to other provisioning intervals?" The record demonstrates

⁷⁴ Veriwn McLean/Webster Decl., para. 35; Veriwn McLean/Webster Reply Decl., para. 9

⁷⁵ FiberNet Comments at 31

⁷⁶ FiberNet also alleges that certain information was missing from Customer Service Records (CSRs). FiberNet Comments at 29. FiberNet does not provide sufficient information regarding the data that it considers necessary, but missing, from Verizon's CSRs, or how the lack of such information harms FiberNet. FiberNet also alleges that Veriwn returns incomplete firm order confirmations (FOCs) which lack critical information. FiberNet Comments at 28-29. Veriwn responds to FiberNet's assertions with the assumption that FiberNet was referring to the issues it raised in the West Virginia 271 proceeding. Verizon's demonstrates that of the 21 examples provided in West Virginia, 12 were more than 18 months old. Of the remaining nine, Verizon found "incomplete" information on four FOCs, but that the confirmations regarded supplemental orders where complete information had been provided with the original FOC. Verizon McLeadWebster Decl., para. 72; Veriwn McLeadWebster Reply Decl., para. 21. Accordingly, we cannot conclude that Verizon fails to demonstrate checklist compliance.

⁷⁷ Verizon McLean/Webster Reply Decl., para. 13. Documents available on Verizon's website include Verizon's Access Service Request Business Rules, Carrier Services Gateway User Guide, Carrier services Gateway Tutorial, Carrier Services Gateway On Line Training, Product and Service Information, Iob Aids, and Industry letters. *Id.*

⁷⁸ See e.g., *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, FCC 02-332, Memorandum Opinion and Order, para. 130 (rel. Dec. 23, 2002) (*Qwest 9-State Order*).

⁷⁹ See generally Appendices B, C, D, and E. See also Maryland Commission Comments, **Ex.** A at 3; D.C. Commission Comments at 25.63; West Virginia Commission Comments at 27-45.

⁸⁰ An M-loop is a voice-grade loop-transport combination. Veriwn Reply, App. A, Tab A, Reply Declaration of Paul A. Lacouture and Virginia P. Rueterholz, para. 187 (Verizon Lacouture/Rueterholz Reply Decl.). An M-Loop is intended to function like an EEL. See Letter from Steven Hamula, Director of Regulatory Affairs, (continued....)

that FiberNet's complaint relates to a process negotiated by Verizon and FiberNet to transition existing resale loops or Verizon retail loops to voice grade M-Loops.⁸² This transition process is being handled on a "project basis,"⁸³ and accordingly, this issue is not relevant to our section 271 analysis.⁸⁴ Also, regarding FiberNet's allegation that Verizon prematurely disconnects customers' service before they are converted to **FiberNet**,⁸⁵ FiberNet fails to provide sufficient evidence to support its assertion. The Commission has consistently stated that it will give little, if any, weight to allegations in a section 271 proceeding without the minimum amount of detail necessary for us to determine whether the applicant fails the checklist, as is the case here.⁸⁶

d. Wholesale Billing

26. **As** part of its obligation to provide nondiscriminatory access to OSS, a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing **systems**.⁸⁷ In particular, BOCs must provide complete, accurate, and timely (1) reports on the service usage of competing carriers' customers and (2) wholesale bills.⁸⁸

27. Based on the evidence in the record, we find, as did the state commissions, that Verizon provides nondiscriminatory access to its billing functions.⁸⁹ In particular, we find that

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FiberNet, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1, Attach. 1 (filed Jan. 23, 2003) (FiberNet Jan. 23 *Ex Parte* Letter).

⁸¹ FiberNet Comments at 19-23; FiberNet Reply at 16-20; Letter from Steven Hamula, Director of Regulatory Affairs, FiberNet, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 (filed Mar. 17, 2003) (FiberNet Mar. 17 *Ex Parte* Letter). We note that Verizon's performance on EELs is satisfactory. See *infra* Section IV.A.2 (UNE Combinations). Additionally, the record shows that the standard interval for other types of EELs that involve designed circuits similar to the M-Loop provided to FiberNet are in the same range. Letter from Ann D. Berkowitz, Verizon, Project Manager - Federal Affairs, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 (filed Mar. 14, 2003) (Verizon Mar. 14 *Ex Parte* Letter).

⁸² FiberNet Comments at 19; Verizon Reply at 37; Verizon Lacouture/Ruesterholz Reply Decl., para. 189.

⁸³ Verizon Lacouture/Ruesterholz Reply Decl., para. 190.

⁸⁴ We have consistently held that the section 271 process is not the appropriate forum to resolve carrier-specific disputes. See, e.g., *Qwest 9-State Order*, para. 182. If Verizon is backsliding on commitments it made to FiberNet during the state proceeding, as FiberNet claims, FiberNet should seek redress using its contractual dispute resolution process or raise the issue before the appropriate state commission or at the Commission.

⁸⁵ FiberNet Comments at 31.

⁸⁶ See, e.g., *Qwest 9-State Order*, para. 130.

⁸⁷ See Appendix F, para. 39.

⁸⁸ *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

⁸⁹ Maryland Commission Comments, *Ex. A* at 3, **5-6**; D.C. Commission Comments at **64-69**; West Virginia Commission Comments at 28-30, 45-50.

the record demonstrates that Verizon provides complete, accurate, and timely reports on the service usage of competing carriers' customers, and complete, accurate, and timely wholesale bills. Verizon uses its **expressTRAK** and Carrier Access Billing System (CABS) billing systems to provide wholesale carrier bills.⁹⁰ KPMG evaluated and found satisfactory all 75 test points regarding Verizon's billing systems in Virginia? Based on the evidence in the record, we find that Verizon's provision of service usage data through the Daily Usage File (**DUF**) meets its obligations. Additionally, we note that no party challenges the timeliness of Verizon's wholesale bills in the application states, and that Verizon demonstrates that it is providing wholesale bills in a timely manner.⁹²

28. Several parties do, however, dispute Verizon's ability to provide complete, accurate, and auditable wholesale bills and contest the effectiveness and timeliness of Verizon's billing dispute resolution process? For the reasons set forth below, we reject those claims. As we found in the *VerizonNew Jersey Order*, to show checklist noncompliance, a carrier must demonstrate that Verizon's billing performance is "materially worse than it was in Pennsylvania at the time of Verizon's application in Pennsylvania."⁹³ Additionally, the Commission has stated, "we recognize, as a practical matter, that high-volume, carrier-to-carrier commercial billing cannot always be perfectly accurate."⁹⁵ While competing carriers advance a number of arguments about Verizon's billing, many of these problems appear to be resolved historical problems.

(i) Complete, Accurate and Auditable Wholesale Bills

29. Auditable Adjustments to Electronic Wholesale bills. Based on our review of recent commercial performance along with the third-party tests performed in Virginia, we find that Verizon provides wholesale bills, both the retail-formatted and BOS-BDT versions, in a

⁹⁰ Verizon primarily uses **expressTRAK** to provide billing for retail products, resale products, UNE-platform, UNE-ports and UNE-loops. Verizon McLean/Webster Decl., para. 140. Verizon uses CABS to provide billing for interoffice transport facilities, collocation, access services, carrier settlement, and other UNE products. Verizon McLean/Webster Decl., para. 140. KPMG tested the accuracy and timeliness of actual bills generated by the **expressTRAK** and CABS systems as well as Verizon's procedures including processes for producing, distributing, and disputing bills. Verizon McLean/Webster Decl., paras. 148-149.

⁹¹ Verizon McLean/Webster Decl., para. 149; see also KPMG Final Report at 18.

⁹² See BI-2-01-2030 (Timeliness of Carrier Bill); see also *VerizonNew Jersey Order*, 17 FCC Rcd at 12333-34, para. 122.

⁹³ AT&T Comments at 17-19; FiberNet Comments at 34-43; NALA/PCA Comments at 3-4; AT&T Reply at 12-13; FiberNet Reply at 20-28.

⁹⁴ *VerizonNew Jersey Order*, 17 FCC Rcd at 12337, para. 127 (finding improper charges that occur on 2-3 percent of a carrier's wholesale bills and that amount to less than 1% of a carrier's overall charges, without further evidence, are insufficient to demonstrate that Verizon does not provide competing carriers a meaningful opportunity to compete).

⁹⁵ Id at 12336-37, para. 126.

manner that offers an efficient competitor a reasonable opportunity to compete. As in Virginia, Verizon provides competing carriers in the application states with a choice of receiving their wholesale bills in a standard retail-formatted bill, or in an industry-standard electronic Billing Output Specification (BOS) Bill Data Tape (BDT) format.⁹⁶ Verizon has allowed competitive LECs to choose the BOS-BDT bill as the official bill-of-record since June 2002.” Verizon acknowledges that in order to ensure the accuracy of the BOS-BDT bill, it must reconcile these bills against the retail-formatted bills.⁹⁸ In order to make the BOS-BDT bills balance internally and match the retail-formatted bill, Verizon adjusts the BOS-BDT bills using a manual **process**.⁹⁹ Any adjustments are then included in the “Other Charges and Credits (OC&C)” section of the BOS-BDT bill, which identifies the adjustments using phrase codes describing the reason for the **adjustment**.¹⁰⁰ Although KPMG conducted a comprehensive test of Verizon’s expressTRAK billing system, due to the recent availability of BOS-BDT billing in Virginia, KPMG evaluated only the contents of Verizon’s retail-formatted bill.¹⁰¹ Therefore, Verizon presents **an** attested report by PwC as verification that its BOS-BDT bills are auditable and comparable to the retail-formatted bill in terms of bill value, detail, and other **characteristics**.¹⁰²

30. We reject the contention that the BOS-BDT bill is neither accurate nor auditable.” We also reject FiberNet’s other concerns with Verizon’s bills, none of which we find persuasive.” FiberNet raises an identical claim to one raised in the Virginia proceeding,

⁹⁶ Verizon McLeadWebster Decl., paras. **140 -145**. Verizon notes that there **are** now over **55, 40, 30** competing carriers operating in Maryland, Washington, D.C., and West Virginia respectively that receive the BOS-BDT wholesale bill. *Id.* at **145**. As the Commission has noted before, the BOS-BDT bill permits competing carriers to more readily audit their bills, especially those carriers providing service in higher volumes. *Verizon Pennsylvania Order*, 16 FCC Rcd at **17428**, para. **17**; *Verizon New Jersey Order*, 17 FCC Rcd at **12333-34**, para. **122 & n.348**.

⁹⁷ Verizon McLean/Webster Decl., para. **145**; Verizon McLeaniWebster Reply Decl., para. **34**.

⁹⁸ Verizon McLeadWebster Decl., paras. **146-147**.

⁹⁹ *Id.* & Attach. **21** (describing the adjustment process and noting that it is identical to the process initiated in Pennsylvania).

¹⁰⁰ *Id.*, para. **147**.

¹⁰¹ *Id.*, para. **149**.

¹⁰² *Id.*, paras. **150-151**. The Commission relied on similar evidence in its section **271** applications for Pennsylvania and New Jersey. See *Verizon Pennsylvania Order*, 16 FCC Rcd at **17430-31, 40-41**, paras. **21, 35-36**; *Verizon New Jersey Order*, 17 FCC Rcd at **12335-36**, para. **125**.

¹⁰³ FiberNet Comments at **38-43**; AT&T Reply at **12-13**; FiberNet Reply at **24-28**.

¹⁰⁴ FiberNet Comments at **38**. FiberNet also raises concerns with the fact that it continues to receive its bills in paper format and that it considers those hills inauditable. *Id.* at **38-39**. The record demonstrates, however, that Verizon’s BOS-BDT bill has been available **as** the bill of record since June **2002**. Verizon McLean/Webster Decl., para. **145**; Verizon McLeaniWebster Reply Decl., para. **34**. Additionally, the Commission has previously found Verizon’s bills to be auditable and FiberNet provides no new argument or evidence that convinces us to reconsider that conclusion. FiberNet also asserts, without additional explanation or supporting evidence, that Verizon will often continue billing for service to an end-user after the end-user has been disconnected. FiberNet Comments at (continued. ...)

asserting that it has repeatedly asked Verizon for mapping of ordering codes to billing codes, to no avail.'" The record demonstrates that Verizon makes such information available in two repositories: Verizon's wholesale website and the Universal Service Order Code (USOC) database.'" FiberNet also claims that it routinely finds errors in the bills it receives from Verizon in West Virginia, and suggests that those errors suggest a pattern of discriminatory and anticompetitive behavior, but provides only one example of such **errors**.¹⁰⁷ We agree with the West Virginia Commission's dismissal'" of FiberNet's claim that the process it follows in order to be able to receive its bills in electronic format was confusing and **burdensome**.¹⁰⁹ The record demonstrates that the documentation and technical specifications are available from Telcordia and BOS-BDT is standard across the former Bell Atlantic-South territory, including West Virginia.'" Finally, we reject FiberNet's claim that Verizon's application must fail because Verizon does not update its billing system to support new product offerings in a timely fashion.'" Verizon demonstrates that it is often required by regulators to provide new products and services to competitive LECs in advance **of** its ability to update the billing system. Under these circumstances, competitive LECs benefit from the **use of** the new product or service, and billing is either processed manually or deferred until the billing system is **ready**.¹¹² Accordingly, we cannot find that Verizon is systemically behaving in a discriminatory manner, particularly in the absence of any showing of harm by FiberNet. Lacking additional support or evidence, and consistent with our section **271** precedent, we find that such isolated incidents are not reflective of a systemic problem that would warrant a finding of checklist noncompliance.¹¹³

31. We also disagree with AT&T's assertion that Verizon's BOS-BDT bills are not auditable because the CLLI code and Access Service Group (ASG) code appear together only in the Customer Service Record section of the bill, while the Other Charges and Credits (OC&C)

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35; FiberNet Reply at 20. FiberNet similarly asserts that Verizon "has substandard billing practices, including, but not limited to, back billing, inaccuracies and manual processes." FiberNet Comments at **42**; FiberNet Reply at 22.

¹⁰⁵ FiberNet Comments at **41-42**.

¹⁰⁶ Verizon McLean/Webster Reply Decl., para. **35**.

¹⁰⁷ FiberNet Comments at **35**; FiberNet Reply at 20.

¹⁰⁸ West Virginia Commission Comments at 48.

¹⁰⁹ FiberNet Comments at 39.

¹¹⁰ Verizon McLeanANebster Reply Decl., para. **34**.

¹¹¹ FiberNet Comments at **42**.

¹¹² Verizon McLean/Webster Reply Decl., para. **35** (citing West Virginia Commission Comments).

¹¹³ Verizon states that FiberNet raised identical claims in the state proceeding, and those claims were rejected by the West Virginia Commission. Verizon Reply at **47**.

section only contains the ASG code.¹¹⁴ Initially, we note that Verizon's BOS-BDT bills in the application states are the same as those that Verizon provides to competitive LECs in Pennsylvania, New Jersey, Delaware and Virginia, where the Commission has previously determined that Verizon's bills are auditable.¹¹⁵ AT&T does not present evidence of changed circumstances or deteriorating service. The record also demonstrates that Verizon's bills are auditable in their current form and that AT&T's software could be programmed to match the ASG in the OC&C section with the ASG and CLLI code in the corresponding CSR section of the BOS-BDT.¹¹⁶ Additionally, industry guidelines published by Telcordia do not require inclusion of the CLLI code in the OC&C section.¹¹⁷ Furthermore, although we do not rely on it, we take comfort in the fact that, pursuant to competitive LEC change request, Verizon has implemented an enhancement to its BOS-BDT to add the CLLI code following the ASG code in the OC&C section of the BOS-BDT bill.¹¹⁸

(ii) Billing Dispute Resolution

32. Several competing carriers allege as in past section 271 applications that Verizon's billing dispute process is inadequate.¹¹⁹ Verizon counters with evidence that it has dramatically reduced the number of outstanding billing disputes in the application states, crediting this improvement to new internal management and an internal task force designed to improve billing claim resolution.¹²⁰ The evidence in the record demonstrates that Verizon reduced its active monthly billing claims in Maryland, Washington, D.C., and West Virginia from 1,700, 530, and 540 claims in January 2002 to approximately 175, 45, and 20 at the end of October 2002, respectively.¹²¹ Additionally, Verizon states that it significantly reduced its

¹¹⁴ AT&T Comments at 18-19; AT&T Reply at 12, n.11; Letter from David Levy and Richard Young, Counsel for AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 5-8 (filed Feb. 11, 2003) (AT&T Feb. 11 Ex Parte Letter).

¹¹⁵ Letter from Ann Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 3 (filed Feb. 21, 2003) (Verizon Feb. 21 Ex Parte Letter on billing format).

¹¹⁶ Verizon McLean/Webster Reply Decl., para. 36; Verizon Feb. 21 Ex Parte Letter on Billing Format at 2.

¹¹⁷ Verizon Reply at 46; Verizon McLean/Webster Reply Decl., para. 36. We agree with AT&T's assertion that a lack of industry standard does not excuse Verizon from meeting its obligation to provide nondiscriminatory access to OSS functions, including fully auditable wholesale bills. AT&T Feb. 11 Ex Parte Letter at 6. However, as discussed above, we find that the record demonstrates that Verizon's BOS-BDT bills are auditable.

¹¹⁸ Verizon Reply at 46-47. *But see* AT&T Feb. 11 Ex Parte Letter at 7-8 claiming that Verizon's intended enhancement will not solve the alleged auditability problem. However, because we find that Verizon's current BOS-BDT bills are auditable, we do not address further any concerns with the February enhancement.

¹¹⁹ FiberNet Comments at 35-37; NALA/PCA Comments at 3-5; FiberNet Reply at 20-21

¹²⁰ Verizon McLean/Webster Decl., paras. 157-161.

¹²¹ Verizon McLean/Webster Decl., paras. 158-160. This figure includes current monthly disputes which have consistently been resolved in a timely manner. Similarly, Verizon states that the dollar value of outstanding billing (continued....)

“backlog” of old claims in Maryland, Washington, D.C., and West Virginia, and that only two claims are older than 30 days.¹²² Accordingly, we find that Verizon is generally addressing billing disputes in a timely manner.

33. We find unpersuasive National ALEC and Prepaid Communications Association’s (NALARCA) argument that Verizon used anticompetitive methods to decrease its substantial dispute backlog, including failure to assign claim numbers, unilateral denial of claims, and failure to provide credits on resolved **issues**.¹²³ As evidence of its claim, NALAPCA claims that one of its members has a claim against Verizon for over \$200,000 – nearly half of the amount of outstanding claims reported by Verizon in **Maryland**.¹²⁴ The record demonstrates, however, that the claim cited by NALA/PCA does not reflect billing errors, but instead reflects Metro Teleconnect’s disagreement with the Maryland Commission’s treatment of the residential directory assistance call **allowance**.¹²⁵ Accordingly, we disagree with NALAPCA classification of this issue as a billing dispute, but instead determine that NALA/PCA’s allegation is properly considered and resolved in Section V.G.1 (Resale of Directory Assistance) *infra*, which addresses NALA/PCA’s concerns regarding Verizon’s resale directory assistance call allowance in Maryland.

34. We find unconvincing FiberNet’s various complaints regarding Verizon’s billing dispute resolution **process**.¹²⁶ In particular, FiberNet fails to provide adequate supporting evidence to substantiate its complaints. FiberNet claims that it submits billing disputes to Verizon, but Verizon fails to assign a claim **number**.¹²⁷ Verizon demonstrates, however, that it provides competitive LECs with the information necessary to track their claims and that it rejects billing disputes (and does not assign a claim number) if the competitive LEC has not provided enough information for Verizon to investigate the **claim**.¹²⁸ FiberNet further complains that when

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claims in Maryland, Washington, D.C., and West Virginia has dropped from almost \$5 million to **\$425,000**, almost \$1 million to \$32,000, and \$390,000 to less than \$10,000, respectively, during the same time period. *Id.*

¹²² *Id.*

¹²³ NALA/PCA Comments at 3-5. FiberNet also asserts that Verizon has failed to properly assign claim numbers. FiberNet Comments at 35; FiberNet Reply at 20.

¹²⁴ See Verizon McLean/Webster Decl., para. **158**.

¹²⁵ Verizon McLean/Webster Reply Decl., para. 31. See Section V.G.1 (Resale of Directory Assistance), *infra*, for a discussion of the Maryland resale directory assistance call allowance.

¹²⁶ FiberNet claims that Verizon has granted disputes regarding certain issues, but continues to bill the item incorrectly, forcing FiberNet to continuously dispute the same issues. FiberNet Comments at 35. On a related note, FiberNet asserts that it has favorably resolved billing disputes, but Verizon has failed to properly credit its account. FiberNet Reply at 21.

¹²⁷ FiberNet Comments at 35; FiberNet Reply at 20.

¹²⁸ Verizon Reply at **48**; Verizon McLean/Webster Reply Decl., para. 25. In those instances, the billing dispute is rejected with an explanation of the additional information required. *Id.*

billing dispute numbers are assigned, disputes are still not resolved in a timely fashion, or are not resolved at all, or that resolved disputes are not credited to FiberNet's **account**.¹²⁹ Verizon addresses these complaints by providing evidence that it sends competitive LECs a letter identifying the claim number, advising of the amount of any adjustment resulting from the claim, and providing a time frame within which the competitive LEC may expect the adjustment. While we do not exclude the possibility that FiberNet may have experienced specific failures in Verizon's systems, FiberNet's anecdotal and general evidence fall short of making a persuasive finding that Verizon has systematically acted in **an** anticompetitive or discriminatory manner. Accordingly, we cannot conclude that Verizon fails to demonstrate checklist compliance.

e. Maintenance and Repair

35. Based on the evidence in the record, we find, as did the state commissions, that Verizon provides nondiscriminatory access to its maintenance and repair OSS functions. We find that Verizon has "deployed the necessary interfaces, systems, and personnel to enable requesting carriers to access the same maintenance and repair functions" that Verizon provides **itself**.¹³⁰ FiberNet alleges that Verizon's maintenance and repair process is ineffective because FiberNet must escalate before Verizon resolves complaints."¹³¹ In addition, FiberNet complains that because Verizon fails to coordinate the actions of its wholesale departments, FiberNet must contact different organizations in order to resolve a problem.¹³² FiberNet's concerns are similar to their other concerns: they are, at best, general allegations of bad conduct that fail to provide any specific evidence of wrongdoing or magnitude of harm. Furthermore, FiberNet does not explain how any of these complaints are relevant to our section 271 analysis. Verizon explains that its approach for wholesale customers is comparable to its retail operations. Specifically, Verizon has implemented distinct support centers to assist wholesale customers depending on the issue involved. Verizon's retail customers similarly do not have a single telephone number to call for all problems, concerns and inquiries."¹³³ Thus, FiberNet's generalized allegations fail to warrant a finding of checklist noncompliance, especially in light of the fact that we have

¹²⁹ FiberNet Comments at 35-36; FiberNet Reply at 20-21. FiberNet provides as **an** example of difficulties it has in resolving billing disputes an ongoing problem concerning Verizon's bills for power usage at FiberNet's West Virginia collocations. FiberNet Comments at 36. The record demonstrates, however, that this dispute has been the topic on ongoing settlement discussions between Verizon and FiberNet concerning the interpretation of contractual provisions between the parties. Verizon McLean/Webster Reply Decl., para. 29. Accordingly, FiberNet's allegations do not warrant a finding of checklist noncompliance. Should the parties be unable to resolve this dispute, FiberNet should raise it with the appropriate state commission, or with the Commission outside of the section 271 process.

¹³⁰ See *Bell Atlantic New York Order*, 15 FCC Rcd at **4067**, para. 21 I; Maryland Commission Comments, **Ex. A** at 3; D.C. Commission Comments at 25, 63; West Virginia Commission Comments at 27-28, 45.

¹³¹ FiberNet Comments at 28

¹³² *Id.* at 30.

¹³³ Verizon McLean/Webster Reply Decl., para. 62.

previously approved Verizon's processes, and the record does not demonstrate that anything varies from the processes we approved in Virginia."¹³⁴

36. Finally, FiberNet complains that it is difficult to open and resolve trouble tickets."¹³⁵ FiberNet recounts 25 alleged instances of such trouble.¹³⁶ Verizon states that it is impossible for FiberNet to have made all of the calls it claims to have made because five of the purported calls had the same date, start time, stop time, and Verizon contact, and that some of FiberNet's attempts to open trouble tickets were made to internal Verizon telephone numbers, rather than to the WCCC.¹³⁷ Consistent with our section 271 precedent, we find that such anecdotal evidence is not sufficient to warrant a finding of checklist noncompliance.

2. UNE Combinations

37. To comply with checklist item 2, a BOC must also demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier.¹³⁸ Based upon the evidence in the record," we conclude, as did the state commissions, that Verizon has demonstrated that it provides nondiscriminatory access to network element combinations as required by the Act and our rules."¹³⁹

38. *EELs*. We disagree with FiberNet's and AT&T's assertion that Verizon's procedures for ordering EELs are discriminatory and unreasonable.¹⁴¹ Verizon requires competitive LECs to submit two separate, sequential orders when ordering EELs at facilities where the interoffice facility (IOF) and loops operate at different speeds. Under this policy, competitors must place an initial order for the IOF, and, only after the IOF is provisioned, may competitors submit a subsequent order for the loops. Commenters assert that competitors face unwarranted delays due to this process, and these delays place them at a distinct competitive

¹³⁴ See *Verizon Virginia Order*, 17 FCC Rcd at 21893, para. 24.

¹³⁵ FiberNet Comments at 31-34

¹³⁶ *Id.* at 32.

¹³⁷ Verizon McLean/Webster Reply Decl., para. 63. Verizon claims that FiberNet's calls to internal Verizon telephone numbers fail to follow the process in place for resolving such problems. *Id.*

¹³⁸ 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315(b)

¹³⁹ See Verizon Application at 45.

¹⁴⁰ Maryland Commission Comments, Ex. A at 3, 9-10; D.C. Commission Comments at 25; West Virginia Commission Comments at 53.

¹⁴¹ AT&T Comments at 32-34; FiberNet Comments at 17-19; AT&T Reply Comments at 22-27; FiberNet Reply at 12-16.

disadvantage to **Verizon**.¹⁴² The commenters also assert that Verizon's procedures are too costly because: 1) competitors must pay two separate order charges, and 2) competitors must pay for the IOF, even though loops have yet to be either ordered or provisioned.'" We find, however, that Verizon demonstrates that this ordering process is consistent with industry guidelines for ordering loop/transport combinations.'" Moreover, Verizon explains that less than three percent of EELs ordered in its service territory require two separate orders.¹⁴⁵ Thus, given the low order volumes of loop/transport orders of different speeds and Verizon's conformity with industry guidelines, we conclude that Verizon's bifurcated ordering process for this type of EEL does not, in itself, constitute a checklist violation. Moreover, we have granted section 271 authority to Verizon in other states where this same ordering policy was in place.¹⁴⁶ Additionally, although we do not rely on it, we note that the Maryland and West Virginia Commissions have ordered Verizon to adopt a simultaneous-ordering process,¹⁴⁷ and the record shows that Verizon will adopt a manual, coordinated loop/transport ordering and billing processes.¹⁴⁸ The D.C. Commission has also indicated that it will initiate a proceeding on this issue.¹⁴⁹ For the reasons

¹⁴² AT&T Comments at 33; FiberNet Comments at 18; AT&T Reply at 23-24; FiberNet Reply at 14. AT&T and FiberNet both argue that loop provisioning can take up to 15 days. AT&T Comments at 33; FiberNet Comments at 18; AT&T Reply at 22; FiberNet Reply at 14. In addition, FiberNet contends that Verizon fails to reuse existing loops, raising the risk that competitors will not be able to timely serve customers with an EEL. FiberNet Comments at 18-19.

¹⁴³ AT&T Comments at 32; FiberNet Comments at 18-19; AT&T Reply at 22-23.

¹⁴⁴ Verizon Reply at 35-36; Verizon Lacouture/Ruesterholz Reply Decl., para. 185. Ordering is a two-step process because the loop order requires information about the specific connecting location ~~for~~ the transport facility, and thus, the loop order cannot be prepared until the transport facilities have been installed. Verizon Lacouture/Ruesterholz Reply Decl., para. 185. Although we do not rely on it, we note that Verizon states that if industry guidelines were modified so that these combinations could be ordered with one order, Verizon would implement those guidelines. *Id.*

¹⁴⁵ Verizon Lacouture/Ruesterholz Reply Decl., para. 185; Letter from Ann Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 2 (filed Feb. 11, 2003) (Verizon Feb. 11 *Ex Parte* Letter on loop/transport ordering processes). Verizon explains that during the month of August, no orders for loop/transport combinations that require two separate ASRs were received in the applications states. Verizon Feb. 11 *Ex Parte* Letter on loop/transport ordering processes at 2.

¹⁴⁶ *Id.* at 1-2. Verizon states that in all of its service areas except Massachusetts, it begins billing for the transport facility as soon as the transport is provisioned.

¹⁴¹ Maryland Commission Comments, Ex. A at 7; West Virginia Commission Comments at 71, 128, 137.

¹⁴⁸ Verizon Lacouture/Ruesterholz Reply Decl., para. 186; Verizon Feb. 11 *Ex Parte* Letter on loop/transport ordering processes at 1-2. Under these procedures, Verizon states that it will not begin billing the competitive LEC for loop/transport combinations until the transport and at least one subtending loop has been provisioned. Verizon Lacouture/Ruesterholz Reply Decl., para. 186. Additionally, commenters raise questions concerning Verizon's acceptance of the Maryland and West Virginia Commission's conditions regarding EELs. AT&T Reply at 26-27; FiberNet Reply at 15. As we do not find the Maryland and West Virginia Commission's conditions to be decisional, we do not find it necessary to comment on Verizon's language accepting those conditions.

¹⁴⁹ D.C. Commission Comments at 40.

set forth above, we find that Verizon procedures for ordering loop/transport combinations do not require a finding of checklist noncompliance.

3. Pricing of Unbundled Network Elements

39. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.¹⁵⁰ Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”¹⁵¹ Section 252(d)(1) provides that a state commission’s determination of the just and reasonable rates for network elements must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.” Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.¹⁵³

40. In applying the Commission’s TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state’s pricing determinations.¹⁵⁴ We will, however, reject an application if “basic TELFUC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.”¹⁵⁵ We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here. In its application, Verizon relies on a benchmark comparison to its UNE rates in New York in order to demonstrate that its UNE rates in Maryland, Washington, D.C., and West Virginia fall within the range that a reasonable application of TELRIC principles would produce.¹⁵⁶ Based on a benchmark comparison to

¹⁵⁰ 47 U.S.C. § 271(c)(2)(B)(ii).

¹⁵¹ 47 U.S.C. § 251(c)(3)

¹⁵² 47 U.S.C. § 252(d)(1)

¹⁵³ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Red 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515. The Supreme Court upheld the Commission’s forward-looking pricing methodology in determining the costs of UNEs. *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646, 1679 (2002).

¹⁵⁴ *Verizon Pennsylvania Order*, 16 FCC Red at 17453, para. 55; see also *Sprint v. FCC*, 274 F.3d at 556 (“When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.”).

¹⁵⁵ *Verizon Pennsylvania Order*, 16 FCC Red at 17453, para. 55 (citations omitted).

¹⁵⁶ See Verizon Application at 47-49, 52-53, 56-57, 61-62; Verizon Application, App. A, Vol. 4, Tab G, Joint Declaration of Marie C. Johns, Patrick A. Garzillo, and Marsha S. Prosini Regarding Washington, D.C. (Verizon Johns/Garzillo/Prosini Decl.), paras. 45-47; Verizon Application, App. A, Vol. 4, Tab F, Joint Declaration of (continued.. ..)

Verizon's UNE rates in New York, we find, as discussed more fully below, that Verizon's UNE rates in Maryland, Washington, D.C., and West Virginia fall within the range that a reasonable application of TELRIC principles would produce and therefore satisfy checklist item 2.

a. Background

41. **Maryland.** The Maryland Commission established Verizon's Maryland UNE rates over the course of several different state proceedings, including separate dockets to consider permanent recurring and non-recurring UNE rates, arbitration proceedings under section 252 of the Act, and the state evaluation of Verizon's compliance with section 271 of the Act. On November 8, 1996, the Maryland Commission adopted interim proxy rates for some UNEs, such as loops and switching, based on proposals submitted by the parties, as modified by the Maryland Commission, or based on the proxy rates set by this Commission in the *Local Competition First Report and Order*.¹⁵⁷ In addition, the Maryland Commission adopted a wholesale discount rate of 19.87 percent, and addressed interconnection and collocation rates.¹⁵⁸ At that time, the Maryland Commission also instituted Phase II of its existing Case No. 8731 to consider the appropriate cost studies for setting permanent interconnection rates.¹⁵⁹ The Maryland Commission later incorporated issues concerning Verizon's December 23, 1996 SGAT into Phase II.¹⁶⁰

42. In January and March 1997, parties filed UNE rate proposals with supporting cost models and studies in Phase II of Case No. 8731.¹⁶¹ The Maryland Commission solicited
(Continued from previous page)

William R. Roberts, Patrick A. Garzillo, and Marsha S. Prosini Regarding Maryland (Verizon Roberts/Garzillo/Prosini Decl.), paras. 63-65; Verizon Application, App. A, Vol. 4, Tab H, Joint Declaration of Gale Y. Given, Patrick A. Garzillo, and Gary Sanford Regarding West Virginia (Verizon Given/Garzillo/Sanford Decl.), paras. 62-64.

¹⁵⁷ See Verizon Application, App. E – Maryland, Vol. 5, Tab 24, *In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996*, Public Service Commission of Maryland, Order No. 73010, Case No. 8731 (Phase I) (rel. Nov. 8, 1996) (*Maryland PSC Interim Rate Order*); Verizon Roberts/Garzillo/Prosini Decl., para. 12.

¹⁵⁸ *Maryland PSC Interim Rate Order* at 14-17, 26-29.

¹⁵⁹ *Id.* at 3 & n.5; Verizon Roberts/Garzillo/Prosini Decl., para. 12. The Maryland Commission later indicated that it would also establish UNE rates in Phase II of the proceeding. Verizon Roberts/Garzillo/Prosini Decl., para. 14.

¹⁶⁰ See Verizon Application, App. E – Maryland, Vol. 15, Tab 74, *In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996*, Public Service Commission of Maryland, Order No. 73707, Case No. 8731 at 2 and n.4 (Phase II) (rel. Sept. 22, 1997) (*Maryland PSC Rate Inputs Order*). The Maryland Commission allowed the SGAT to go into effect, subject to further review, provided that it contain a notice indicating that its terms are to be in conformance with Maryland Commission decisions and also the interim proxy rates where applicable. See *Maryland PSC Rate Inputs Order* at 51-54; Verizon Roberts/Garzillo/Prosini Decl., para. 12.

¹⁶¹ Verizon Roberts/Garzillo/Prosini Decl., para. 13. Verizon sponsored the Bell Atlantic and Bellcore cost models. AT&T and MCI jointly sponsored the Hatfield 3.1 cost model. *Maryland PSC Rate Inputs Order* at 4, 6-10; see also Verizon Roberts/Garzillo/Prosini Decl., para. 13.

comments on the cost studies, held eight days of evidentiary hearings, and received post-hearing pleadings.¹⁶² On September 22, 1997, the Maryland Commission issued an order adopting key input values to be used by the parties in their respective cost models, but declined to adopt any specific cost model,¹⁶³ concluding that “the choice of model is not nearly as important in determining the true costs for unbundled elements as the key inputs.”¹⁶⁴ Accordingly, the Maryland Commission determined the appropriate inputs and authorized the parties to re-run the cost models with these inputs.¹⁶⁵ On October 22, 1997, Verizon and AT&T and MCI (jointly) submitted results of model runs using the new approved inputs and their respective cost models.¹⁶⁶

43. On July 2, 1998, the Maryland Commission adopted permanent recurring UNE rates in Phase II of Case No. 8731,¹⁶⁷ using the model runs with the Commission-determined inputs.¹⁶⁸ It again declined to rely exclusively on either cost model as the sole methodology for determining the appropriate UNE costs and stated that it would look upon the models as “useful guides.”¹⁶⁹ The Maryland Commission adopted a statewide average loop rate of \$14.50, which is slightly above midway between AT&T’s and Verizon’s proposed statewide averages, and it ordered that all other loop prices and the NID price be determined using the same percentage differential between the cost models.” Using a similar approach to determine switching rates, the Maryland Commission adopted a rate of \$0.0038 per minute, based on both the Hatfield and

¹⁶² See Verimn Roberts/Garzillo/Prosini Decl., paras. 13, 15; see also *Maryland PSC Rate Inputs Order* at 2.

¹⁶³ *Maryland PSC Rate Inputs Order* at 18-19. Indeed, the Maryland Commission expressed “serious and legitimate concerns with respect to the propriety of relying solely upon either model in this case.” *Id.* at 18. See also *Verizon Roberts/Garzillo/Prosini Decl.*, para. 16.

¹⁶⁴ *Maryland PSC Rate Inputs Order* at 19. See also *Verizon Roberts/Garzillo/Prosini Decl.*, para. 16.

¹⁶⁵ *Maryland PSC Rate Inputs Order* at 20. For instance, the Maryland Commission adopted a 10.1 percent overall cost of capital, various fill factors, and the Commission depreciation lives, among other inputs. *Id.* at 29, 36, and 42. The Maryland Commission also made specific findings concerning cable costs and switching costs, including the appropriate switch discounts and switch mix. *Id.* at 43-49.

¹⁶⁶ See *Verizon Application, App. E – Maryland, Vol. 16, Tab 92, In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996, Public Service Commission of Maryland, Order No. 74365, Case No. 8731 at 2 (Phase II) (rel. July 2, 1998) (Maryland PSC Recurring Rate Order)*; see also *Verizon Roberts/Garzillo/Prosini Decl.*, para. 18.

¹⁶⁷ See generally *Maryland PSC Recurring Rate Order*. See also *Verimn Roberts/Garzillo/Prosini Decl.*, para. 20.

¹⁶⁸ *Maryland PSC Recurring Rate Order* at 3.

¹⁶⁹ *Id.* at 5.

¹⁷⁰ See *id.* at 10-11. See also *Verizon Roberts/Garzillo/Prosini Decl.*, para. 20.

Bell methodologies.”” On August 18, 1999, Verizon submitted a compliance filing revising its SGAT to reflect these permanent recurring UNE rates.””

44. In a separate proceeding, Case No. 8786, the Maryland Commission adopted interim non-recurring UNE rates.¹⁷³ The Maryland Commission initiated this proceeding on May 1, 1998 during its review of the revised cost proposals submitted in Phase II of Case No. 8731.¹⁷⁴ It directed Verizon to file updated cost material regarding non-recurring cost studies filed in Case No. 8731 and also directed AT&T and MCI to file their non-recurring cost materials.”” On August 28, 1998, the Maryland Commission adopted Verizon’s proposed non-recurring charges as interim rates, reasoning that they were significantly lower than the existing rates and that AT&T and MCI’s proposed rates had not yet been subject to scrutiny.¹⁷⁶

45. On September 29, 2000, Verizon filed proposed rates, terms and conditions for the additional UNEs this Commission established in the *UNE Remand Order*.¹⁷⁷ In response, the Maryland Commission issued a letter on November 29, 2000 indicating that it would permit Verizon to offer the new UNEs at the proposed rates on an interim basis subject to true-up to

¹⁷¹ See *MarylandPSC Recurring Rate Order* at 14. For many of the other UNE rates, the Maryland Commission selected something between those proposed by AT&T’s and Verizon’s cost models using the Commission-approved inputs. See Verizon Roberts/Garzillo/Prosini Decl., para. 20. Because Verizon proposed a flat charge for signaling and AT&T proposed a usage-based charge, the Maryland Commission deferred a decision on signaling rates and sought additional comment on the opposing methodologies. See *Maryland PSC Recurring Rate Order* at 20-22; Verizon Roberts/Garzillo/Prosini Decl., para. 21.

¹⁷² See Verizon Application, App. E – Maryland, Vol. 17, Tab 99, Letter from John W. Dillon, Vice President – External Affairs, Bell Atlantic – Maryland, Inc., to Felecia L. Greer, Executive Secretary, Public Service Commission of Maryland, Transmittal No. 1093 (filed Aug. 18, 1999) (*Verizon SGAT Compliance Letter*); Verizon Roberts/Garzillo/Prosini Decl., para. 22.

¹⁷³ See Verizon Application, App. F – Maryland, Vol. 1, Tab 5, In *the Matter of the Investigation of Non-Recurring Charges for Telecommunications Interconnection Services*, Public Service Commission of Maryland, Order No. 74551, Case No. 8786 at 4-5, 7 (rel. Aug. 28, 1998) (*Maryland PSC Non-Recurring Rate Order*); Verizon Roberts/Garzillo/Prosini Decl., para. 24.

¹⁷⁴ See Verizon Application, App. F – Maryland, Vol. 1, Tab 1, In *the Matter of the Investigation of Non-Recurring Charges for Telecommunications Interconnection Services*, Public Service Commission of Maryland, Order No. 74214, Case No. 8786 at 1 (rel. May 1, 1998) (*Maryland PSC Initial Non-Recurring Order*); Verizon Roberts/Garzillo/Prosini Decl., para. 19.

¹⁷⁵ See *Maryland PSC Initial Non-Recurring Rate Order* at 1-2; Verizon Roberts/Garzillo/Prosini Decl., para. 19.

¹⁷⁶ See *Maryland PSC Non-Recurring Rate Order* at 4-5; Verizon Roberts/Garzillo/Prosini Decl., para. 24.

¹⁷⁷ See Verizon Application, App. Q – Maryland, Vol. 1, Tab 1, Letter from John W. Dillon, Vice President – External Affairs, Verizon Maryland, Inc., to Felecia L. Greer, Executive Secretary, State of Maryland Public Service Commission, Transmittal No. 1136 (filed Sept. 29, 2000); Verizon Roberts/Garzillo/Prosini Decl., para. 25. See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

permanent rates subsequently adopted.'" The Maryland Commission also **set** interim line sharing rates in the context of an arbitration proceeding on April 3, 2001.¹⁷⁹ The Maryland Commission emphasized that the interim rates it adopted would apply only until it set permanent rates in yet another pending rate proceeding, Case No. 8879.¹⁸⁰

46. The Maryland Commission opened Case No. 8879 on January 19, 2001 to re-examine UNE rates in Maryland given the changes in telecommunications technology.'" The Maryland Commission invited parties to refresh cost studies, models, and rates relied on in previous proceedings, and to address the effects of judicial and regulatory developments.'" On February 26, 2001, the Maryland Commission expanded the scope of Case No. 8879 to include issues previously examined in Case No. 8786, the non-recurring UNE rate investigation.¹⁸³ The Maryland Commission held hearings in Case No. 8879 from December 3 to December 11, 2002, parties filed post-hearing briefs, and the record is now closed.'" The Maryland Commission has not yet issued a pricing decision in this case.¹⁸⁵

¹⁷⁸

See Verizon Application, App. Q – Maryland, Vol. 1, Tab 3, Letter from Donald P. Eveleth, Assistant Executive Secretary, State of Maryland Public Service Commission, to John W. Dillon, Vice President – External Affairs, Verizon Maryland, Inc., Re Transmittal No. 1136 (dated Nov. 29, 2000). See also Verizon Roberts/Garzillo/Prosini Decl., para. 25.

¹⁷⁹

See generally Verizon Application, App. G – Maryland, Vol. 4, Tab 34, *In the Matter of the Arbitration of Rhythms Links, Inc. and Covad Communications Company vs. Bell Atlantic – Maryland Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Public Service Commission of Maryland, Order No. 76852, Case No. 8842 (Phase II) (filed April 3, 2001) (*Maryland PSC Line Sharing Rate Order*). See also Verizon Roberts/Garzillo/Prosini Decl., para. 26.

¹⁸⁰

See *Maryland PSC Line Sharing Rate Order* at 13, 49. The Maryland Commission further noted that permanent collocation rates would be addressed separately in Case No. 8766, which was a proceeding initiated to consider all collocation rates. *Id.* at 13.

¹⁸¹

See Verizon Application, App. E – Maryland, Vol. 17, Tab 107, *In the Matter of the Investigation into Recurring Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996*, Public Service Commission of Maryland, Order No. 76694, Case No. 8731 at 3 (Phase II) (rel. Jan. 19, 2001) (*Maryland PSC Jan. 19 Rate Order*). See also Verizon Roberts/Garzillo/Prosini Decl., para. 27. At the same time, the Maryland Commission denied all requests for rehearing and reconsideration of the *Maryland PSC Recurring Rate Order* and closed Phase II of Case No. 8731. *Maryland PSC Jan. 19 Rate Order* at 4.

¹⁸²

Maryland PSC Jan. 19 Rate Order at 3.

¹⁸³

See Verizon Application, App. F – Maryland, Vol. 5, Tab 21, *In the Matter of the Investigation of Non-Recurring Charges for Telecommunications Interconnection Services*, Case No. 8786 and *In the Matter of the Investigation into Recurring Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996*, Public Service Commission of Maryland, Notice of Procedural Schedule, Case No. 8879 at 2 (rel. Feb. 26, 2001). Accordingly, the Maryland Commission closed Case No. 8786. *Id.*

¹⁸⁴

See Verizon Roberts/Garzillo/Prosini Decl., para. 27.

¹⁸⁵

Id.